

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 470 OF 2005

Smt. Jani Harischandra Naik
Khandeparkar & Ors. ... Petitioners

Versus

Mr. Rajaram Anant Amonkar & Ors. ... Respondents

Mr. S.D. Lotlikar, senior advocate with Mr. M. D'Souza for
the petitioners.

Mr. Nigel a Costa Frias for respondent 1.

CORAM : SMT. RANJANA P. DESAI, J.

DATED : 28TH JUNE 2006.

ORAL ORDER :

1. The petitioners have challenged in this writ petition order dated 22/11/2004 passed by the Administrative Tribunal, Goa in Mundcar Revision Application No.68 of 1997 whereby the Administrative Tribunal has rejected the revision application filed by the petitioners challenging the order dated 29/5/1997 passed by the Additional Collector, North Goa, Dist. Panaji.

2. The case of the petitioners, in short, is that in response to the notice under section 29(4) of the Goa, Daman & Diu Mundcars Act (Protection from Eviction) Act, 1975 (for short, "the said Act") issued by the Mamlatdar of Tiswadi Taluka inviting applications from the persons satisfying the eligibility criteria for registering their names in the register of Mundcar, the 1st petitioner presented an application for registering her as Mundcar of the suit dwelling house. On 8/12/1988, the Mamlatdar granted the said application and ordered the registration of petitioner 1 as Mundcar of the suit dwelling house. The 1st respondent filed an application seeking permission to file an appeal against the said judgment and order dated 8/12/1988 on 19/11/1992. The 1st respondent also filed an application for condonation of delay in filing the appeal on 19/11/1992. In the said appeal, the claim of the 1st respondent rested on a sale deed dated 8/1/1988 under which it was alleged that the landlord had sold the plot of land to him. The said appeal was disposed of on 29/5/1997 by the Additional Collector. The Additional Collector granted permission to the 1st respondent to file the appeal. He

condoned the delay. While allowing the appeal, he set aside the order dated 8/12/1988 passed in favour of the petitioners with a direction that the 1st respondent be heard in case No.MND/REG/2446/80 and a speaking order should be passed after appreciating the documents and evidence on record. The revision carried from this order having been dismissed, the petitioners have approached this court.

3. I have heard Mr. Lotlikar, the learned senior counsel appearing for the petitioners, at great length. He contended that the Additional Collector has committed a grave error in not following the proper procedure. He submitted that it was incumbent upon him to first give a verdict on the locus-standi of the 1st respondent. He should have then considered whether the delay should be condoned or not and, thereafter, he ought to have heard the petitioners on merits and then passed an appropriate order. He submitted that the Additional Collector could not have in such a haphazard manner dealt with an untenable claim made by the 1st respondent and set aside the order passed in favour of the petitioners way back in the year 1988. The learned

counsel also contended that the Additional Collector lost sight of the fact that the purported sale deed is dated 8/1/1988 and it is allegedly entered into during the pendency of the registration proceedings. He contended that the Additional Collector lost sight of the doctrine of lispendence. If at all, the 1st respondent has any right that would obviously depend upon the result of the pending proceedings. The 1st respondent would be bound by the final outcome of those proceedings. The learned counsel contended that it was open to the 1st respondent to make an application and intervene in the proceedings before the Mamlatdar when the application for registration was granted. It is not open for her to come at such a belated stage and seek setting aside of an order which was passed in favour of the petitioners way back in the year 1988. Mr. Lotlikar also contended that the Additional Collector has taken into consideration a document which was flourished in the court by the 1st respondent and opined on it. He submitted that he could not have decided the merits of the case in this manner without giving a proper opportunity of hearing to the petitioners. According to Mr. Lotlikar, the Additional Collector has not given a finding on the question of

locus-standi and he has wrongly condoned the delay. Mr. Lotlikar contended that assuming that this court is of the view that the 1st respondent has locus-standi and the delay is rightly condoned, since the petitioners were not heard on merits, the matter may be remanded to the trial court.

4. Mr. Frias, the learned counsel for respondent 1 on the other hand submitted that the impugned order merits no interference.

5. It appears that the petitioners had filed a reply to the application filed by the 1st respondent for permission to file an appeal. In that reply, the petitioners have clearly stated that the 1st respondent has no locus-standi to file the present appeal. It is also stated that the order was passed in case No.MND/REG/2446/80, which was instituted by the petitioners in the year 1980 and any transaction made during the pendency of the said application was subject to the result of that application and, therefore, the 1st respondent cannot make any grievance about the order dated 9/12/1988. It is also stated that no documentary evidence was produced by

him to substantiate his claim. In this reply, certain averments have been made touching the merits of the case. There is on record yet another reply filed by the petitioners to the condonation of delay application filed by the 1st respondent. It is stated that the 1st respondent was aware of the entire proceedings of the dwelling house of the petitioners ever since he was served with the ex-parte order of injunction granted by the Mamlatdar on 22/1/1982 in Case No.MND/1/82. There are certain other averments suggesting that the application for delay is without substance. Therefore, the application for condonation of delay was also opposed. It is clear from the order of the Additional Collector that the learned counsel appearing for both sides were present and heard. Before the Additional Collector, a detailed reply was filed by the petitioners and after considering all this, the Additional Collector has given his findings. It may be that the procedure adopted by the Additional Collector is irregular but a fair reading of the order indicates that the Additional Collector has considered the replies and arguments advanced by the parties. As regards locus-standi of the 1st respondent is concerned, he has reproduced the arguments advanced by

the learned counsel for the petitioners and stated that the 1st respondent is an aggrieved party and can file an appeal. In the aforesaid circumstances, I am not impressed by the argument of Mr. Lotlikar that this is an order which is passed without considering the arguments and the case of the petitioners.

6. In my considered opinion, the impugned order merely directs a remand and, hence, does not merit any interference. It is pertinent to note that admittedly in January, 1982, an ex-parte injunction order was obtained by the petitioners against the respondents in the proceedings in which the landlord was also a party. On 31/1/1982, the said injunction order was confirmed after hearing both sides. In the proceedings initiated for registration of petitioner 1 as Mundcar in the year 1980, the 1st respondent was not made a party. It appears that in the year 1992, the petitioners have applied for purchase certificate. In that application, however, the 1st respondent has been made a party. The 1st respondent claims to have purchased the property during the pendency of the registration proceedings. In such fact

situation, it is necessary for the court to adjudicate his claim. In such circumstances, if the Additional Collector remands the matter and the revisional court dismisses the revision filed against his order, in my opinion, in the writ jurisdiction those orders should not be interfered with. It is not necessary for me to state that all observations made by the Additional Collector or the revisional court are merely prima facie observations and after remand the court ceased of the matter is bound to hear the parties afresh and give its decision in accordance with law uninfluenced by any observations made by the courts below. The parties will be at liberty to raise all contentions before the Additional Collector. This court has also not opined on the right of the parties. In the circumstances, I find no merit in the petition. Petition dismissed.

(SMT. RANJANA DESAI, J.)